IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RSA. NO. 211 of 2003.

Judgment Reserved on: **8.5.2007**

Date of Decision: 16.5.2007

Shankar Narain Pardhan

…….Appellant

Versus

Dhrup Kumar alias Dhrup Chand …… Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? Yes

For the appellant: ***Mr. K.C. Rana, Senior Advocate with Mr. Rajesh Mandhotra, Advocate.***

For the respondent: ***Mr. Ajay Sharma, Advocate.***

Kuldip Singh, J

1. This appeal has been filed by plaintiff against the judgment, decree dated 29.5.2002 passed by learned Additional District Judge(II) Kangra at Dharamshala in Civil Appeal No.106/99, reversing the judgment, decree dated 15.10.1999 of learned Sub Judge-I, Dharamshala. The parties here in are referred in the same manner as in the trial Court.

2. The brief facts of the case are that plaintiff filed a suit for possession by way of ejectment of defendant from the shop measuring 16'x10', situated in Gabli Dar, Tehsil Dharamshala, Distt Kangra and for recovery of Rs. 1000/- on account of arrears of rent for the months of November and December, 1997.

3. The plaintiff has pleaded that he is owner of the shop and the defendant is a tenant in the shop on Rs. 500/- per month rent. The Tenancy starts and ends with the first and last day of the every calendar

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W*hether reporters of Local Papers may be allowed to see the Judgment? yes*

month. The defendant has not paid the rent for the months of November and December, 1997 amounting to Rs.1000/-. The tenancy of the defendant was terminated on 31.1.1998. vide notice dated 8.1.1998 which was delivered to him on 9.1.1998.

4. The suit has been contested by defendant by taking preliminary objections of maintainability and that the plaintiff is not the owner of the shop nor defendant is his tenant. The plaintiff has no locus standi to file the suit. On merits the defendant denied the claim of the plaintiff.

5. The plaintiff filed replication in which he reiterated his stand as pleaded in the plaint.

6. The trial Court while deciding issue No.3 has returned the finding that there is relationship of landlord and tenant between the parties and under issue No.2 it has been held that defendant is in arrears of rent and while deciding issue No.1, it has been held that plaintiff is entitled to possession of the shop. The trial Court decreed the suit on 15.10.1999.

7. The defendant filed appeal against the decision dated 15.10.1999 which has been accepted by way of impugned judgment, decree and thus, plaintiff is in appeal.

8. The appeal has been admitted for hearing on the following substantial question of law:-

> ***Whether the plaintiff-appellant could have been non-suited, on the ground that he was not the owner of the land on which a shop was constructed by him and given on rent to the defendant-respondent****?*

9. I have heard the learned counsel for the parties and have also gone through the record.

Substantial Question of law

10. The plaintiff has appeared as PW-1. He has deposed that defendant is his tenant in the shop. He has proved rent deeds Ex.PW-1/A, Ex.PW-1/B, Ex.PW-1/C and Ex.PW-1/D executed between the parties. He has stated that the defendant has not paid him rent for the months of November and December. He has proved notice Ex.PW-1/E. PW-2 Kuldip Kumar has proved rent deed Ex.PW-1/A. PW-3 Shiv Darshan has deposed that plaintiff is the owner of disputed shop and defendant is his tenant. He has proved rent note Ex.PW-3/A and identified the signatures of defendant on this document. The defendant has appeared as DW-1 and has deposed that shop in dispute was constructed by him and he is not tenant of plaintiff. He has admitted that in the shop in dispute electricity meter is in the name of plaintiff. He has shown his ignorance that in Jamabandi, land in dispute has been shown in the possession of the plaintiff.

11. The rent deed dated 5.12.1986 Ex.PW-1/A was executed between plaintiff and defendant for renting out shop w.e.f. 1.12.1986 to 31.10.1987. Similarly, rent deed dated 26.4.1993, Ex.PW-1/B was also executed between plaintiff and defendant for renting out the shop w.e.f. 1.5.1993 to 31.3.1994. The rent deed dated 9.11.1994, Ex.PW-1/C was executed between plaintiff and defendant for renting out the shop for the period of 1.11.1994 to 30.9.1995. The rent deed dated 6.10.1995, Ex.PW-1/D was executed between plaintiff and defendant for renting out the shop for 11 months w.e.f. 1.10.1995 to 30.9.1996. The rent deed Ex.PW-2/A was executed between plaintiff and defendant for renting out the shop for a period of eleven months w.e.f. 1.10.1996 at the rate of Rs.500/-. The tenancy of defendant has been terminated vide notice Ex.PW-1/E.

12. The trial Court after appreciation of the evidence has decreed the suit of the plaintiff and passed a decree of possession as well as recovery of rent

for the months of November and December, 1997 amounting to Rs.1000/- along with interest at the rate of 6% from the date of filing of the suit.

13. In the grounds of appeal before the lower appellate Court, the defendant has not raised the question that he is not a tenant in the shop. He mainly assailed the judgment, decree of the trial Court before the lower appellate Court on the grounds that the plaintiff is not the owner of the shop.

14. The lower appellate Court has returned the findings that rent deeds have been executed between the parties. Thus it has been established that the defendant is a tenant in the shop in question under the plaintiff. The Addl. District Judge, has erred in holding that since plaintiff is not the owner of the shop therefore he has no title in the shop and the suit filed by him for possession against defendant is not competent.

15 The defendant has not filed any appeal or cross-objections against the impugned judgment, decree wherein learned Addl. District Judge has found the relationship of landlord and tenant between plaintiff and defendant. The defendant can not question the title of the plaintiff, regarding the shop. The plea of defendant that the plaintiff is not the owner of the shop is not available to him in view of Section 116 of the Evidence Act. The defendant can not dispute the title of plaintiff regarding the shop. The defendant has not paid rent of the shop to the plaintiff for the months of November and December, 1997 at the rate of Rs.500/- per month and his tenancy has been terminated. The lower appellate Court has erred in reversing the judgment, decree of the trial Court. The plaintiff has succeeded in establishing that he is the landlord and defendant is the tenant under him in the shop at the rate of Rs.500/- per month. In the facts and circumstances the contrary findings recorded by the lower appellate Court are set aside. The substantial question of law is decided in favour of plaintiff and against the defendant.

16. In view of above discussion, the appeal is accepted and impugned judgment and decree are set aside. The judgment and decree dated 15.10.1999 of the trial Court are restored with costs through out.

(Kuldip Singh)
Judge

May 16 , 2007
(sks)